

REMARKS

Applicants are presenting this paper as a submission filed along with a Petition to Revive the present application under 37 CFR 1.137(b). It is the intent of the applicants to continue the prosecution of the currently pending application USSN 10/645,870, which is currently subject to a Non-Final Rejection mailed February 2, 2006. The present submission is accompanied by a check in the amount specified by the Office to cover the fee required for making the petition (namely, \$750.00; 37 CFR 1.17(m)). Applicants have claimed, and still enjoy, the status of SMALL ENTITY.

In the Examiner's Action mailed February 2, 2006, various objections and rejections were made:

The drawings were objected to for failing to comply with 37 CFR 1.84(p)(5) because they do not show "child's seat 202" mentioned in paragraph [0030] in the specification. By this submission, applicants are submitting a replacement sheet of drawing showing the element 202.

Objection to specification was made as failing to provide proper antecedent basis for the claimed subject matter, namely "second container" in claim 15 and "third container" in claim 26. By this submission, the recitations "second container" and "third container" have been changed to "first tray" and "second tray", and the basis for the objection should now be removed.

Claim 14 was objected to as being incomplete insofar as the claim language does not terminate in an end. By this Amendment, the claim wording has been completed.

Claim 15 was objected to insofar as the phrase "surface means" in line 6 was deemed unclear, there not being correspondence, per the Examiner, between the specification and the claim. By this Amendment, the language has been changed to recite "an array of connected elements defining means for engaging the first container", with the result that the expression "surface means" has been replaced with a more definite recitation.

Claims 11, 15-23, 25-30 and 36 were rejected under 35 USC 112, second paragraph, as being replete with functional and indefinite language, i.e., as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. In particular, the Examiner noted that the recitation of "conventional"

shopping carts was considered "not of proper scope" inasmuch as the Examiner felt "conventional" shopping carts were not positively recited "leaving it unclear and indefinite as to what is encompassed by the comparison with the claimed shopping cart and the 'conventional shopping cart'". The Examiner further noted that the use of quotes around the word "conventional" added to the indefiniteness. The amendments presented above seek to cure any indefiniteness in claim 11 that arose as a result of the use of the word "conventional". By this amendment, the recitations in the affected claims have been altered to remove the bases for these rejections.

Claims 1-17, 24-32 and 34-36, as best understood, were also rejected under 35 USC 102(b) as being anticipated by the US patent to Davidson (USP 5,507,507), which, according to the Examiner teaches "...a shopping cart (10) including a wheeled base (rails 22, 24 and casters 14), a container (18B) supported by the base, a gate (58) pivotably supported (see Figure 5) on a horizontal support rod located at the rear of the container, a pedestal (36) formed on the base for supporting a container thereon, the pedestal being secured to the base at a location between the forward and rearward ends of the base, the container being supported on the rear of the table portion pedestal so that the rear of the container is disposed forwardly of the rear of the base, and a merchandise (38) carrier (or second carrier) disposed between and attached to the rear of the wheeled base and pedestal (see at least Figure 3 and Column 4, lines 20-25)".

The Examiner further urged that Figure 2 of Davidson showed the cart pedestal having a slight inclination with the front of the pedestal being higher than the rear, a handle member 66 located a substantial distance upward from the basket 18b that is part of the container, two rods 26 connecting to a forward attachment of the handle and to the pedestal, and two rods 32 for connecting a rearward attachment of the handle to the base. Further according to the Examiner, Davidson teaches two hinge rods 62 for pivoting of a rear gate, and a child seat (shown in Figure 6) that can be attached to the rear of the basket, and Davidson shows in Fire 1 a third container (18a) disposed above the first container (18b)."

Applicants respectfully solicit reconsideration and withdrawal of this rejection for the following reasons.

Applicants agree that Davidson does, indeed, show a shopping cart bearing several baskets attached to a wheeled base. However, the similarities end there as there are many differences between the Davidson cart and the applicants' cart.

For one thing, claim 1 calls for “a gate member attached to a handle assembly mounted to said base rearwardly of said container and functionally arranged therewith to act as a closure for the rear of the container”. In the Davidson patent, the gate member is mounted to the basket 18, and pivoting of the rear wall is accomplished relative to the basket itself, not relative to the base, since the rear wall is not attached to the base.

For another thing, claim 1 requires that the container (ie, the basket) be secured on the pedestal at a fixed location. In the Davidson patent, the container is not secured to the pedestal, and certainly not in or at a fixed location.

Claim 1 now also speaks of hanging the container/basket from the handle member at a lowered location relative to the upper part of the handle member such that “said cart possesses a lowered center of gravity”. The Examiner never addresses this aspect of applicants’ invention. The shopping cart of Davidson is not a cart with a lowered center of gravity – the (tip-over) stability of the cart is compromised by the inclusion of the handle member 34 positioned at a height to accommodate an upper basket 18a positioned atop the lower basket 18b.

In the Davidson cart, there are no hinge rods attached to the handle member 66 from which rear gates for the baskets can be pivotably supported. In the Davidson cart, the space between the lower basket and the wheeled base is not of a size that effectively eliminates the storage or placement of articles on the wheeled base.

The Examiner asserts that the pedestal is shown in Figure 2 of Davidson “with a slight inclination where the front of the pedestal is placed higher than the rear”. Nothing in the Davidson disclosure speaks about or suggests that the front of the pedestal is higher than the rear of the pedestal. If there is any suggestion of the pedestal having a higher front than rear, it most probably results from the three-dimensional depiction of the structure, which as shown in Figure 2 is somewhat distorted. For example, Figure 2 seems to show that the front of the top basket 18a is located adjacent and aligned with the rear of the lower basket 18b. Yet, Figure 5 shows that this is not so – the front of the upper basket is positioned over the longitudinal mid-way point of the lower basket.

The Examiner says that Davidson teaches of two hinge rods (62) for pivoting of a rear gate, noting Figure 5. This is not the case – claim 11 recites “a pair of vertically spaced

apart hinge rods, a first one of said hinge rods being located in the vicinity of the upper end of said handle member and being disposed on said handle member at a first height, and the other of said hinge rods being disposed said first one of said hinge rods, said lower hinge rod pivotably securing the rear gate of said basket", and Davidson fails to disclose or teach vertically spaced apart hinge rods, a first one of the rods being disposed on the handle member, or a lower hinge rod pivotably securing the rear gate of the basket.

Claims 13 and 14 recite a pivoting child seat at the rear of the basket disposed at a height substantially below the height of the upper end of the handle member. The child seat of Davidson is secured to the basket adjacent the handle member, and NOT at a height substantially below the height of the upper end of the handle member.

Claims 18-23 have been rejected under 35 USC 103(a) as being unpatentable over Davidson. Applicants urge withdrawal of this rejection as it is improper for the reasons that follow.

The Examiner states that Davidson discloses a pair of horizontal rods (62) separated vertically, but does not teach the rods connected to the spine (26), and further that Davidson shows in Figure 2 the upper rod (62) lying in substantially the same plane as the handle and forming a pivot connection for the rear gate. He then concludes it would have been obvious to connect the pair of horizontal rods to the spine "to increase the strength and robustness of the cart.

This conclusion of the Examiner is without any support whatsoever, and is clearly reached only after reading the applicants' disclosure. An examination of the Davidson patent will reveal that the so-called hinge rods 62 for the pivoting gate are integral parts of the baskets 18a and/or 18b, not the handle member 66. There is no teaching in Davidson that would suggest to a person of ordinary skill in this art to dispose the hinge rods such that they extend between and are connected substantially normal to the spine members (note claims 15 and 16).

For all the foregoing reasons, applicants respectfully urge that the rejections of the claims in this application either under 35 USC 102(b) as being anticipated by Davidson or under 35 USC 103(a) as being unpatentable over Davidson are improper and ought to be withdrawn.

Further, in view of the amendments proposed hereinabove, all other objections and rejections have been obviated, and it is the position of applicants that these claims should be re-evaluated and found to be in compliance with the requirements of 35 USC 112, first and second paragraphs, and to satisfy the requirements of 35 USC 102 and 103.

Whereby applicants solicit allowance of the claims now in this application.

Respectfully submitted on behalf of applicants,


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